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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

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Migratory Birds; Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Version 2

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that *Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Version 2* is available. The guidance provides recommendations for agency staff and developers to use an iterative process to avoid and minimize negative effects on eagles and their habitats resulting from the construction, operation, and maintenance of land-based, wind energy facilities in the United States.

FOR FURTHER INFORMATION CONTACT: Dr. George Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, Virginia 22203-1610, or 703-358-1825.

SUPPLEMENTARY INFORMATION:

The Service is charged with implementing many statutes that provide protection to bald and golden eagles, including the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668–668c), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–12), and the Endangered Species Act (ESA) (16 U.S.C. 1531–44). Under these statutes, the Service implements permit programs for eagles as authorized by implementing regulations in title 50 of the Code of Federal Regulations (CFR). In 2009, the Service promulgated regulations in 50 CFR part 22 authorizing issuance of permits for nonpurposeful take of eagles (74 FR 46836, September 11, 2009). On February 18, 2011, we issued a draft of *The Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy* for public comment (76 FR 9529). We received 124 comments by the end of the comment period on May 19, 2011.

We have considered the public comments received on the draft guidance and now issue the *Eagle Conservation Plan Guidance: Module 1—Land-based Wind Energy, Version 2* (ECPG) to assist potential permit applicants and to promote compliance with BGEPA with respect to such permits. The ECPG describes a process for wind energy developers, in coordination with the Service, to collect and analyze information that could support an application for a programmatic permit to authorize unintentional take of eagles at wind energy facilities. The ECPG provides recommendations for the development of eagle conservation plans (ECPs) to support issuance of eagle programmatic take permits for wind facilities.

Programmatic take permits will authorize limited nonpurposeful mortality and disturbance of eagles at wind facilities, provided that effective offsetting conservation

measures that meet regulatory requirements are carried out. To comply with the permit regulations, conservation measures must avoid and minimize take of eagles to the maximum degree practicable, and, for programmatic permits necessary to authorize ongoing take of eagles, advanced conservation practices must be implemented, if available, such that any remaining take is unavoidable.

Further, for eagle management populations that the Service has determined cannot sustain additional mortality, any remaining take must be offset through compensatory mitigation such that the net effect on the eagle management population is, at a minimum, no net loss. The ECPG interprets and clarifies the permit requirements in the regulations at 50 CFR 22.26 and 22.27 and does not impose any binding requirements beyond those specified in the regulations.

The Service recommends that ECPs be developed in five successive stages. The process is intended to be a progressive, increasingly intensive look at potential effects of the development and operation of a particular site and design configuration to eagles. The objectives, recommended actions, and recommended data sources for each of the five stages in the ECP are described in the Stage Overview table in the guidance. The ECPG recommends that project developers or operators employ specific procedures in their site assessments so the data can be combined with that from other facilities in a formal adaptive management process. This adaptive management process is designed to reduce uncertainty about the effects of wind facilities on eagles.

Project developers or operators are not required to use the recommended procedures in this ECPG. However, if different approaches are used, the developer or operator should coordinate with the Service in advance to ensure that approaches being

considered will provide comparable data and meet the regulatory requirements.

Additionally, Service review time for applications that employ different approaches will likely be longer than if the recommendations in the ECPG were followed.

The ECPG recommends that, at the end of each of the first four stages, project developers or operators determine, in consultation with the Service, which of the following categories the project, as planned, falls into: (1) high risk to eagles, with little opportunity to minimize effects; (2) high or moderate risk to eagles, but with an opportunity to minimize effects; or (3) minimal risk to eagles.

The ECPG is posted online at <http://www.fws.gov/migratorybirds>. You can request a printed copy of the guidance by writing to the address or calling the phone number listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 24, 2013

Daniel M. Ashe

Director, U.S. Fish and Wildlife Service.

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